

§ 57.320

official plant may request an appeal inspection by filing such request with the Regional Director in the region where the product is located or with the Chief of the Grading Branch.

[63 FR 69971, Dec. 17, 1998]

§ 57.320 How to file an appeal.

The request for an appeal inspection or review of an inspector's decision may be made orally or in writing. If made orally, written confirmation may be required. The applicant shall clearly state the identity of the product, the decision which is questioned, and the reason(s) for requesting the appeal service. If such appeal request is based on the results stated on an official certificate, the original and all copies of the certificate available at the appeal inspection site shall be provided to the inspector assigned to make the appeal inspection.

§ 57.330 When an application for an appeal grading or inspection may be refused.

When it appears to the official with whom an appeal request is filed that the reasons given in the request are frivolous or not substantial, or that the condition of the product has undergone a material change since the original grading or inspection, or that the original lot has changed in some manner, or the Act or the regulations in this part have not been complied with, the applicant's request for the appeal inspection may be refused. In such case, the applicant shall be promptly notified of the reason(s) for such refusal.

§ 57.340 Who shall perform the appeal.

The assignment of the inspector(s) who will make the appeal inspection under § 57.310 shall be made by the Regional Director or the Chief of the Grading Branch, Poultry Division, Agricultural Marketing Service.

[63 FR 69968, 69971, Dec. 17, 1998]

§ 57.350 Procedures for selecting appeal samples.

(a) *Prohibition on movement of product.* Products shall not have been moved from the place where the inspection being appealed was performed and must

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have been maintained under adequate refrigeration when applicable.

(b) *Laboratory analyses.* The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. When the original sample containers cannot be located, the appeal sample shall consist of product taken at random from double the number of original sample containers.

(c) *Condition inspection.* The appeal sample shall consist of product taken from the original sample containers plus an equal number of containers selected at random. A condition appeal cannot be made unless all originally sampled containers are available.

§ 57.360 Appeal inspection certificates.

Immediately after an appeal inspection is completed, an appeal certificate shall be issued to show that the original inspection was sustained or was not sustained. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Government. When the appeal inspector assigns a different class to the lot or determines that a net weight shortage exists, the lot shall be retained pending correction of the labeling or approval of the product disposition by the National Supervisor.

§ 57.370 Cost of appeals.

(a) There shall be no cost to the appellant when the appeal inspection discloses a material error was made in the original determination.

(b) The costs of an appeal shall be borne by the appellant at an hourly rate of \$27.36, including travel time and expenses if the appeal was frivolous, including but not being limited to the following: The appeal inspection discloses that no material error was made in the original inspection, the condition of the product has undergone a material change since the original inspection, the original lot has changed in some manner, or the Act or these